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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/987,163	11/13/2001	Hiroaki Takahata	Q66991	6425

7590 05/17/2002

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EXAMINER

RIBAR, TRAVIS B

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 05/17/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

12-6

Office Action Summary	Application No.	Applicant(s)	
	09/987,163	TAKAHATA ET AL.	
	Examiner	Art Unit	
	Travis B Ribar	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 3-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Winter ('061).

The applicant claims an easily peelable film that includes a polyester sealing layer of specific thicknesses (claims 1 and 5) and a layer adjacent to the polyester sealing layer that includes an ethylene/unsaturated carboxylic acid copolymer or an ethylene/vinyl acetate (EVA) copolymer (claims 1 and 3). The ethylene/unsaturated carboxylic ester copolymer is later claimed in claim 4 to be either an ethylene/methyl acrylate copolymer (EMA) or an ethylene/methyl methacrylate copolymer. The applicant also claims the ethylene content of the ethylene copolymer layer (in claim 2). Claims 6 and 7 encompass a lid member made from the easily peelable film and a packaging body that includes that lid member, respectively.

Winter ('061) relates to a multilayer film that is easily peelable and is used in food container applications as a peelable lid (column 15, line 45, meeting the respective restrictions in the applicant's claims 6 and 7). The multilayer film in Winter ('061) contains a sealing layer of a polyester resin (column 4, lines 55-57) that is adjacent to a layer of either EMA or EVA (column 9, lines 4-11), meeting the laminate structural

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requirements of claims 1, 3, and 4. The thickness requirements of claims 1 and 5 are also taught in the reference, where the thickness of the polyester sealing layer is shown to be 5 micrometers (example 2). Winter ('061) therefore meets all of the requirements of claims 1 and 3-7.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winter ('061) in view of Charrier.

Winter ('061) is applied to claim 1 as shown above, but does not specify the amount of ethylene present in the EVA or EMA layer as the applicant does in claim 2. The lack of such information in Winter ('061) indicates that EVA or EMA with wide-ranging contents of ethylene may be suitably used in the invention to bond the backing layer to the sealing layer.

Charrier discloses that commonly sold EVA copolymers contain 55-60% ethylene units. This falls within the range specified by the applicant in claim 2. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use a commonly sold EVA polymer in the invention shown in Winter ('061). The motivation for doing so would be to suitably bond the backing layer in the film shown in Winter ('061)

to the sealing layer. Therefore it would have been obvious to combine Charrier with Winter ('061) to obtain the invention as specified in claim 2.

5. Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Genske et al. in view of Willham et al.

Genske et al. discloses a multilayer film suitable for use as lidstock in a food packaging application (column 1, lines 20-22, meeting claims 6 and 7). The multilayer film includes a sealing layer and an adjacent layer that can include EVA or EMA (column 6, lines 1-31). However, even though these aspects of claims 1, 3-4, and 6-7 are met by the reference, there is no indication that the sealing layer can comprise polyester or that the polyester layer should be of the thickness indicated by the applicant in claims 1 and 5.

Willham et al. claims a peelable sealing film (paragraph 7) in which the sealing layer is made from polyester (Willham et al., claim 1). The invention is easily applied to packaging applications (paragraph 34) and the sealing layer is present in the thickness specified by the applicant in claims 1 and 5 (paragraph 33). The advantage to using this composition for a sealing layer is that it adheres to a substrate at relatively low temperatures (paragraph 6).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use a polyester sealing layer in the invention shown in Genske et al. The motivation for doing so would be to provide a heat-sealing layer that was sealable

at low temperatures. Therefore it would have been obvious to combine Willham et al. with Genske et al. to obtain the invention as specified in claims 1 and 3-7.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Genske et al. in view of Willham et al. as applied to claim 1 above, and further in view of Charrier.

Genske et al. does not specify the amount of ethylene present in the EVA or EMA layer as the applicant does in claim 2. The lack of such information in Genske et al. indicates that EVA or EMA with wide-ranging contents of ethylene may be suitably used in the invention to bond the backing layer to the sealing layer.

Charrier discloses that commonly sold EVA copolymers contain 55-60% ethylene units. This falls within the range specified by the applicant in claim 2. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use a commonly sold EVA polymer in the invention shown in Genske et al. The motivation for doing so would be to form a structure analogous to the one taught in Genske et al. Therefore it would have been obvious to combine Charrier with Genske et al. and Willham et al. to obtain the invention as specified in claim 2.

7. Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Genske et al. in view of Winter ('061).

Genske et al. discloses a multilayer film suitable for use as lidstock in a food packaging application (column 1, lines 20-22, meeting claims 6 and 7). The multilayer

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film includes a sealing layer and an adjacent layer that can include EVA or EMA (column 6, lines 1-31). However, even though these aspects of claims 1, 3-4, and 6-7 are met by the reference, there is no indication that the sealing layer can comprise polyester or that the polyester layer should be of the thickness indicated by the applicant in claims 1 and 5.

Winter ('061) discloses a sealing film made from polyester in the thickness claimed by the applicant in claims 1 and 5, as discussed above. The advantage to using the sealing layer of Winter ('061) is that the resulting film is suited for high temperature applications (column 5, lines 5-8).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use a polyester sealing layer in the invention shown in Genske et al. The motivation for doing so would be to provide a multilayer sealing film that is suited for use at high temperatures. Therefore it would have been obvious to combine Winter ('061) with Genske et al. to obtain the invention as specified in claims 1 and 3-7.

8. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Genske et al. in view of Winter ('061) as applied to claim 1 above, and further in view of Charrier.

Genske et al. does not specify the amount of ethylene present in the EVA or EMA layer as the applicant does in claim 2. The lack of such information in Genske et al. indicates that EVA or EMA with wide-ranging contents of ethylene may be suitably used in the invention to bond the backing layer to the sealing layer.

Charrier discloses that commonly sold EVA copolymers contain 55-60% ethylene units. This falls within the range specified by the applicant in claim 2. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use a commonly sold EVA polymer in the invention shown in Genske et al. The motivation for doing so would be to form a structure analogous to the one taught in Genske et al. Therefore it would have been obvious to combine Charrier with Genske et al. and Winter ('061) to obtain the invention as specified in claim 2.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Winter ('999) shows a polyester heat-sealing peelable film.

Kocher et al. discloses a laminate structure closely related to the laminate structure claimed by the applicant.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis B Ribar whose telephone number is (703) 305-3140. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (703) 308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are (703)

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872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Travis B Ribar
Examiner
Art Unit 1711

TBR
May 9, 2002